

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

SMARTMATIC USA CORP.,
SMARTMATIC INTERNATIONAL
HOLDING B.V., and SGO
CORPORATION LIMITED,

Plaintiffs,

v.

MICHAEL J. LINDELL and MY
PILLOW, INC.,

Defendants.

Case No. 22-cv-0098-WMW-JFD

**MEMORANDUM OF LAW IN SUPPORT OF SMARTMATIC’S UNOPPOSED
MOTION TO REDACT OCTOBER 11, 2023 HEARING TRANSCRIPT**

Plaintiffs Smartmatic USA Corp., Smartmatic International Holding B.V., and SGO Corporation Limited (collectively, “Smartmatic”) respectfully move the Court to seal the transcript of the Court’s October 11, 2023 motions hearing [ECF No. 243] (the “Hearing”) and to file publicly a copy containing the redactions indicated by yellow highlighting in Sealed Exhibit 1 to the Declaration of James R. Bedell filed with Smartmatic’s motion. Defendants do not oppose the relief requested.

Courts have recognized “a common-law right of access to judicial records,” but “the right to inspect and copy judicial records is not absolute.” *IDT Corp. v. eBay*, 709 F.3d 1220, 1222 (8th Cir. 2013). “[S]alutary interests served by maintaining confidentiality of the information sought to be sealed” are often held to outweigh the interests served by the common-law right of access. *Id.* at 1223. Included in those

salutary interests is the preservation of confidentiality of competitively sensitive information. *Id.* at 1224. How a company “values certain aspects of its business operations” is considered sensitive and competitive business information that suggests sealing or redacting is appropriate, especially when it is “not plainly relevant to the [] issue the District Court has been asked to resolve.” *Blu Dot Design & Mfg., Inc. v. Stitch Indus., Inc.*, No. 17-cv-3208-PJS-KMM, 2018 WL 1370533, at *2 (D. Minn. Mar. 16, 2018).

During the Hearing, the parties discussed one of Smartmatic’s expert reports, which was marked with the “Attorneys’ Eyes Only” designation. Defendants did not file the document because of its confidential nature. The document contains highly sensitive and competitive information regarding Smartmatic’s technology that its competitors could use to unfairly usurp business opportunities from Smartmatic. Discussion about the nature of the document at the Hearing, what it shows, and what kind of features or attributes have been added to Smartmatic’s hardware and software following the 2020 election, could also be used to compete unfairly with Smartmatic.

Smartmatic’s proposed redactions are narrowly tailored to capture only this confidential information, and the proposed redactions leave alone any discussion not specifically pertaining to the document’s contents. Importantly, the proposed redactions do not attempt to conceal discussion on the merits of whether Defendants are entitled to the information sought in their motion to compel. *Cf. ARP Wave, LLC v. Salpeter*, No. 18-cv-2046 (PJS/ECW), 2021 WL 406466, at *2 (D. Minn. Feb. 5, 2021) (rejecting proposed redactions that conceal the judge’s “thoughts and inquiries related to the merits

of the claims”). As such, the proposed redactions appropriately balance Smartmatic’s interest in the preservation of its confidential business information with any generalized public interest in access to the proceedings on Defendants’ motion to compel.

WHEREFORE, Smartmatic respectfully requests that the Court grant this motion, order that the unredacted transcript of the October 11, 2023 hearing be sealed, and permit public filing of a copy of the transcript containing the redactions indicated by yellow highlighting in Exhibit 1 to the Bedell Declaration.

Dated: November 20, 2023

Respectfully submitted,

/s/ James R. Bedell_____

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